LIANG TEH HAI (PRACTISING UNDER THE NAME AND STYLE OF LIANG & CO)

v.

MEDICAL CENTRE (JOHOR) SDN. BHD.

HIGH COURT MALAYA, JOHOR BAHRU
DATO' HJ. ABDUL MALIK BIN HJ. ISHAK J
[CIVIL APPEAL NO: 12-24 OF 1992]
25 FEBRUARY 1995

CONTRACT: *Accountant claiming professional fees - Dispute on quantum - Claim based on quantum meruit - s. 71 Contracts Act 1950 - Whether By-Laws for accountants should be imported in calculating professional fees - Reliance on evidence of another accountant - Whether appellant's claim sufficiently proved.*

EVIDENCE: *Dispute regarding professional fees of accountant - Accountant of 21 years standing called as expert witness - Weight to be attached to his evidence.*

PRACTICE & PROCEDURE: *Appeal - Claim for professional fees by accountant - Claim based on quantum meruit - Defence of accord and satisfaction - Failure to plead quantum meruit and accord and satisfaction - Effect thereof.*

The appellant, an accountant, claimed the sum of RM66,028 via three bills as professional fees incurred by the appellant in handling the respondent's hospital project. The appellant had spent 2 1/2 years and a total of 316 1/2 man hours assisting the respondent in raising a loan and providing financial consultancy services until the hospital became operational in 1986. During the 2 1/2 years the respondent did not pay the appellant any fees and instead gave the appellant a personal loan of RM10,000 which was understood to be refundable upon the appellant receiving his payment. The trial Court found that there was an existing oral contract between the parties but rejected the claim for the first bill on the ground that it had not been strictly proved and reduced the second and third bills to RM100 and RM3,000 respectively on the basis that the fees charged for a similar service in 1984 was less and the appellant could not arbitrarily increase the fees in view of s. 172(16) of the Companies Act 1965. The appellant appealed.

The appellant, claiming on the basis of quantum meruit, argued that the respondent was bound by s. 71 of the Contracts Act 1950 to compensate the appellant as he had lawfully performed his duty not intending that it would be gratuitous. He also argued in favour of the importation of the By-Laws (On Professional Conduct and Ethics) On Fees (the By-Laws) and the acceptance of the evidence of Soh Siong, a fellow accountant, called as a witness who testified that accountants in Malaysia followed a time cost schedule to calculate professional fees. In rebuttal, the respondent raised the defence of accord and satisfaction in connection with the RM10,000 and submitted that the appellant could not rely on quantum meruit as the statement of claim did not contain the crucial words "or alternatively a reasonable fee" as stated in the Atkin's Court Forms. The respondent failed to call an expert witness to rebut the evidence of Soh Siong.

Held:

[1] The trial Court failed to take into account that the appellant had produced at the trial all the relevant documents pertaining to the hospital project and intended to call the bank manager as a witness. He was thus prepared to prove his claim on all three bills but was prevented by the concessions extended by the respondent in an attempt to save time.

[2] The respondent's defence of "accord and satisfaction" runs counter to the statement of defence and there was no attempt at the trial stage to amend their statement of defence to incorporate this defence. Consequently, this point fails as an afterthought.

[3] There is a difference between the statement of claim in this appeal and the sample from the Atkin's Court Forms. Here, the appellant could have argued and relied on quantum meruit based on the general prayer for further or other relief in the statement of claim but he relied entirely on the specific amounts set out in the statement of claim - a course of action which he was entitled to do in law.

[4] The By-Laws for accountants should be adopted as they reflect the professional conduct and ethics of accountants in the country. In so doing, the Court has not lost sight of the evidence of Soh Siong which though not binding greatly assisted the Court in coming to a decision in regard to the claim under the first bill.

[5] The first bill was perfectly in order as it reflected what Soh Siong said to be the normal practice for accountants in Malaysia to calculate their professional fees in a time cost schedule. Having devoted 316 1/2 man hours on the job, the appellant was entitled to be paid for it. The decision of the trial Court on this point is set aside.

[6] The second bill was for professional services rendered by the appellant for tax matters and was done at a time when the respondent was fully operational which could not be compared with the dormant period in 1984. However, there were two bills issued by the appellant on the same day in regard to the same subject matter with different price tags and no explanations were given for the discrepancies. Consequently, the claim under the second bill should be dismissed and the order of the trial Court allowing the sum of RM100 should be set aside.

[7] With regard to the third bill, the reasoning of the trial Court that there was no consent from the respondent's company to unilaterally increase the audit fees and consequently limiting the appellant's claim to RM3,000 at par with similar services rendered in 1985 should stand.

[Appeals with regard to first bill allowed, second bill disallowed, third bill disallowed with order of trial Court maintained. Costs to appellant].

Cases referred to:

Neogh Soo Oh & Ors. v. G. Rethinasamy [1984] 1 MLJ 126 ***(foll)***
Smith v. Hughes [1871] LR 6 QB 597 ***(refd)***
Bonham-Carter v. Hyde Park Hotel Ltd. [1948] 64 TLR 177 ***(refd)***
Zainal Abidin bin Sulaiman And 26 Others v. Hoya Holdings Sdn. Bhd. [1993] 2 AMR 31 ***(cit)***
Hontestroom (S.S.) v. Durham Castle (S.S) [1927] AC 37 ***(cit)***
Watt or Thomas v. Thomas [1947] AC 487 ***(cit)***
Teoh Keat Seng v. Jamaludin bin Abdul Majid [1993] 2 AMR Supp. Rep. 209; [1993] 4 CLJ 498 ***(cit)***
London Passenger Transport Board v. Moscrop [1942] 1 ALL ER 97 ***(foll)***
Blay v. Pollard & Morris [1930] 1 KB 628 ***(foll)***
Janagi v. Ong Boon Kiat [1971] 2 MLJ 196 ***(foll)***
Lim Eng Kay v. Jaafar bin Mohamed Said [1982] 2 MLJ 156 ***(refd)***
Datin Peggy Taylor v. Udachin Development Sdn. Bhd. [1984] 1 MLJ 85, [1985] 1 MLJ 121 FC ***(refd)***

Legislation referred to:

Companies Act 1965, s. 172(16)
Contracts Act 1950, s. 71

Other sources referred to:
Halsbury's Law of England, 4th Edn., Vol. 9, p. 473, para. 692
Atkin's Court Forms, 2nd Edn., Vol. 12, p. 177

For the appellant - Gan Kim Sing; M/s. Gan & Lim
For the respondent - S. C. Yap (Wong Su Chen with him); M/s. Arthur Lee & Co.

JUDGMENT

Hj. Abdul Malik bin Hj. Ishak J:

The appellant, an accountant by profession and practising under the name and style of Liang & Co., filed a summons in the Sessions Court, Johor Bahru ("the trial Court") and claimed against the respondent the sum of RM66,028 being professional fees incurred by the appellant in handling the respondent's hospital project.

The appellant relied heavily on three (3) bills to support his claim before the trial Court. These bills were:

1. MGT/1091/86 ("the first bill") dated 30 June 1986 for RM60,000;
2. TX/1589/99 ("the second bill") dated 28 March 1986 for RM1,200;

   and

3. AUD/1520/88 ("the third bill") dated 1 January 1988 for RM4,828.

After a trial, the trial Court rejected wholly the appellant's claim for the first bill but allowed the second and third bills with a reduction in its quantum. Thus, for the second bill, the trial Court granted and reduced the quantum to RM100, while the quantum for the third bill went down to RM3,000. Being aggrieved, the appellant filed this appeal.

Before the trial Court, the appellant gave evidence and from the appeal record the following tabulated facts surfaced:

(a) that the appellant has been a qualified accountant since 1973;

(b) on 31 March 1982, the appellant was instructed by Dato' Dr. Siew Kuang Choong @ Siow Kuang Ling ("Dato"') , the managing director of the respondent's company and the owner of the land on which the hospital was to be built, to incorporate the respondent's company styled as "Medical Centre (Johore) Sdn. Bhd.";

(c) the appellant was frequently called upon to give advice to the Dato' in regard to the financial affairs of the respondent's company;

(d) generally, the appellant rendered financial consultancy services to the respondent;

(e) to achieve the target for setting up the hospital project and particularly to raise funds, the appellant went about the laborious task of preparing the feasibility studies for submission to the various financial institutions to support and amplify the loan applications;

(f) that the appellant assisted the respondent in loan raising, took care of the financial problems in its entirety, spent 2½ years to see through the project until the hospital was operational on 30 June 1986;

(g) that the appellant had approached numerous financial institutions on behalf of the respondent and made professional representations to these financial institutions to request them to consider financing the respondent's hospital project. The appellant

successfully obtained approval from Arab Malaysian Merchant Bank Berhad for RM5,500,000 facilities but this was rejected by the respondent as the directors of the respondent's company refused to be made guarantors to the said loan. Finally, Malayan Banking Berhad approved banking facilities of RM5,000,000. These facilities were approved through the hard work and professional representations by the appellant. The respondent took up the offer from Malayan Banking Berhad to finance its hospital project;

(h) that the appellant successfully arranged from MBF Leasing Sdn. Bhd. to finance the leasing of medical equipments for the respondent;

(i) that the appellant spent a total of 316 ½ man hours working on the hospital project until the hospital went into operations as reflected in the time cost schedule (exhibit P2); and

(j) it was part and parcel of the appellant's case that for the period of 2½ years; the respondent did not make any payment for the appellant's professional fees. When approached, the Dato' gave an excuse that the respondent's company had no money and instead gave a personal loan of RM10,000 to the appellant. It was the appellant's case that this loan was given on the understanding that when the appellant received his payment from the respondent, the appellant would repay the personal loan to the Dato'.

To support the quantum as set out in the time cost schedule (exhibit P2), the appellant called a fellow professional (just like the case of *Neogh Soo Oh & Ors. v. G. Rethinasamy* [1984] 1 MLJ 126, where the evidence of three advocates and solicitors who gave evidence for the plaintiffs, though such evidence did not bind the trial Judge as a Judge of fact regarding the legal standard by which the defendant's conduct should be judged, yet the trial Judge considered their evidence as guidance in deciding the matter before him) in the person of Soh Siong @ Soh Siong Hoon, a qualified accountant of 21 years' standing ("Soh Siong"). Soh Siong was the chairman of the Malaysian Institute of Accountants, southern branch (a body established under the Accountants Act, 1967) from 1987 to 1990. Briefly, he stated that accountants in Malaysia normally follow a time cost schedule to calculate their professional fees and they are guided by the By-Laws (on Professional Conduct And Ethics) on Fees ("By-Laws"). Of pertinence, Soh Siong said that an accountant has to record the time spent in order to bill his client for the professional fees, and he quoted the rate to be in the region of RM200 to RM250 per hour depending on three factors. Firstly the level of skill required to do the job. Secondly, the experience of the accountant and, lastly, the responsibility involved. The time actually spent on the assignment must be recorded because, at the end of the day, the accountant would bill according to the time spent. Under cross-examination, Soh Siong stressed that both the time spent and the rate as stipulated above were important factors for billing clients for work done. It must be emphasised that the respondent did not call an expert witness to rebut the evidence of Soh Siong.

The respondent gave evidence through the said Dato' who confirmed that there was no formal appointment of the appellant for the hospital project. He stated that the respondent's appointment was verbal in nature and he admitted that he did not expect the appellant to render his services for free. He further stated that he had verbally requested the appellant to inform him of the actual fees incurred but this was not forthcoming. The

said Dato' confirmed the personal loan of RM10,000 given by him to the appellant. The said Dato' further testified that even though the first bill was dated 30 June 1986, yet he had first sight of it only in 1988.

The trial Court appraised the problem that confronted her by first examining whether there was a contract in existence between the parties. She appreciated good law when she held that though there was no formal appointment in the sense of a written letter to that effect (or a written agreement for that matter), yet on the available evidence, she felt inclined to accept, as a fact, that the appellant was appointed for the sole purpose of rendering his professional services in the context of the incorporation of the respondent's company. It is now trite law that where the contract is wholly by word of mouth, its contents are a matter of evidence for the trial Judge to consider. It must be found as a fact exactly what it was that the parties said, as, for example, in *Smith v. Hughes* [1871] LR 6 QB 597 where the question was whether the subject matter of a contract of sale was described by the vendor as "good oats" or as "good old oats". In the present appeal, the appellant as a qualified accountant would not be foolhardy as to venture into such a big project without first ascertaining the scope of his involvement. That there was a valid and subsisting oral contract between the appellant and the Dato', in the context of the facts of the present appeal, can never be doubted. Indeed, from the tenor of the defence put up by the respondent they were concerned only in regard to the quantum, particularly the first bill which to them was too exorbitant. Having found that there was in fact an oral contract subsisting between the appellant and the Dato', the trial Court rejected wholly the first bill since there was a failure, according to her, on the appellant's part to strictly prove his claim. The trial Court blamed the appellant for his wanton failure to prove the first bill to the hilt. The party who alleges must prove its claim: *Secundum allegata ad probata*. The trial Court said, and here I quote to show the extent of the trial Court's thinking:

> It is not difficult to imagine that the plaintiff must have kept a record of all the discussions, preparations and whatnots that appears in P2. He could not have done this from his memory alone. So why did he not just introduce those records in evidence or at least produce the loan documents, letter(s), cash flow etc, that he claimed he prepared?

In adopting this stance, the trial Court must have thought that in an adversarial system like ours, the appellant must prove every iota of evidence and it is not enough for him to throw them at the feet of the Court and expect success. On this point, Lord Goddard in *Bonham-Carter v. Hyde Park Hotel Ltd.* [1948] 64 TLR 177, 178 has this to say:

> Plaintiffs must understand that if they bring actions for damages it is for them to prove their damage; it is not enough to write down the particulars, and, so to speak, throw them at the head of the Court, saying: 'This is what I have lost; I ask you to give me these damages. They have to prove it.

See also *Zainal Abidin bin Sulaiman And 26 Others v. Hoya Holdings Sdn. Bhd.* [1993] 2 AMR 31 at page 1376.

In insisting that the appellant must prove his claim on the first bill, the trial Court failed to take into account and overlooked entirely the evidence that the appellant, in pursuance of a notice to produce the documents dated 27 November 1990 had produced at the trial all the relevant documents pertaining to the hospital project. However, by consent of all parties concerned in an attempt to save time, it was agreed that the several affidavits filed and the documents adverted to therein in respect of the appellant's application for summary judgment be admitted as evidence (see pages 23 and 24 of the appeal record).

Yet another pertinent point overlooked by the trial Court is this. The bank manager from Malayan Banking Berhad attended the trial and even though the appellant's Counsel wanted to call him as a witness, the respondent's Counsel conceded that it was not necessary to call the manager (see page 31 of the appeal record). Thus, it can be seen that the appellant was prepared to prove his claim on not only the first bill but also on the second and third bills, but was prevented by the concessions extended by the respondent in an apparent attempt to save time.

I am fully aware that an appellate Court is at a disadvantage not to have seen the witnesses, but from the appeal record it is crystal clear that the trial Court has failed to use or has palpably misused her advantage and, consequently, I ought to take the responsibility of reversing her decision in regard to the first bill (see *Hontestroom (S.S.) v. Durham Castle (S.S)* [1927] AC 37 and *Watt or Thomas v. Thomas* [1947] AC 487 as applied vigorously in *Teoh Keat Seng v. Jamaludin bin Abdul Majid* [1993] 2 AMR Supp. Rep 209; [1993] 4 CLJ 498).

The appellant gave evidence under oath that he spent a total of 316½ man hours on the hospital project and that he has not been paid for his services. From a mere RM2 company, the respondent developed by leaps and bounds and started its operations in June 1986 and it has been argued before me that s. 71 of the Contracts Act, 1950 binds the respondent to make compensation to the appellant as the appellant has lawfully performed his duty never intending, for one moment, that it would be gratuitous. In rebuttal, the respondent adverted to the evidence of the said Dato' that the appellant took a personal loan from the respondent in the sum of RM10,000 and this was followed by another sum of RM5,000. Incidentally, the loan of RM10,000 was raised by the appellant under examination in chief and when confronted with this piece of evidence, the respondent took this opportunity and alleged that the appellant had agreed to settle the claim under the first bill by accepting, in lieu thereof, a lesser amount. This sudden change in the respondent's defence of "accord and satisfaction" runs counter to the statement of defence filed by the respondent. It is now established by a long line of authorities that a party is bound by his pleadings and his case must be confined to the issues raised in the pleadings (*London Passenger Transport Board v. Moscrop* [1942] 1 ALL ER 97). Scrutton LJ, in the same vein, said in *Blay v. Pollard & Morris* [1930]1 KB 628 especially at page 634 to the effect that:

> Cases must be decided on the issues on record; and if it is desired to raise other issues they must be placed on the record by amendment. In the present case the issue on which the Judge decided was raised by himself without amending the pleadings and in my opinion he was not entitled to take such a course.

Nearer home is the statement by the late Sharma J in *Janagi v. Ong Boon Kiat* [1971] 2 MLJ 196 where his Lordship tersely said:

> It is on the examination of the pleadings that the Court notices the differences which exist between the contentions of the parties to the action. In other words the matters on which the parties are at issue are determinable by an examination of the pleadings. An issue arises when a material proposition of law or fact is affirmed by one party and denied by the other. The Court is not entitled to decide a suit on a matter on which no issue has been raised by the parties. It is not the duty of the Court to make out a case for one of the parties when the party concerned does not raise or wish to raise the point.

Before the trial Court, there was no attempt whatsoever by the respondent to amend their statement of defence to incorporate the defence of accord and satisfaction and, consequently, this point falls flat to the ground as it can be dismissed as a mere afterthought.

Next, it was argued that the claim under the first bill was for a specific amount and the appellant's Counsel misapprehended the law when he submitted that the appellant was entitled to a reasonable sum under the first bill because the appellant did not claim the sum under the first bill on the ground of *quantum meruit*. *Halsbury's Laws of England*, 4th edition, volume 9 at page 473 at paragraph 692 sets out the meaning of *quantum meruit* in the following terms:

> The terms "*quantum meruit*" or "*quantum valebat*" are used in three distinct senses at common law, namely as denoting: (1) a claim by one party to a contract, for example on breach of the contract by the other party, for reasonable remuneration for what he has done; (2) a mode of redress on a new contract which has replaced a previous one; (3) a reasonable price or remuneration which will be implied in a contract where no price or remuneration has been fixed for goods sold or work done.

My attention was drawn to *Atkin's Court Forms*, second edition, volume 12 at page 177 where a sample of the statement of claim for work done implied contract: *quantum meruit* was exhibited and for comparison it is reproduced below:

> 1. The plaintiff is an associate member of the Royal Institute of British Architects and carries on his practice as an architect at (address).
>
> 2. On or about ..., 19..., the defendant orally instructed the plaintiff to prepare plans and scale drawings for the construction of stables at the defendant's premises at (address).
>
> 3. The plaintiff, in pursuance of the defendant's said instructions, duly prepared plans and scale drawings for the construction of such stables.
>
> 4. It was an implied term of the contract between the plaintiff and the defendant that the defendant should pay to the plaintiff a fee in accordance with the scale of the said institute, or alternatively a reasonable fee.
>
> 5. The plaintiff's fee in accordance with the scale of the said institute is £500, Alternatively £500 is a reasonable fee.
>
> 6. The defendant has failed to pay to the plaintiff the said sum of £500 or any sum.
>
> And the plaintiff claims £500.

It was submitted that in the present appeal, the statement of claim as filed did not carry the crucial words "or alternatively a reasonable fee" and the appellant was barred from relying on *quantum meruit*, I agree with that submission but I would add further that there is a difference between the statement of claim filed in the present appeal with that of the sample as extracted from the *Atkin's Court Forms* and it is this. In the statement of claim filed in the present appeal there is a prayer at paragraph 5(iv) which reads as follows:

> (iv) further or other relief that this Honourable Court may deem fit to grant

and this brings to mind the case of *Lim Eng Kay v. Jaafar bin Mohamed Said* [1982] 2 MLJ 156, where Salleh Abas FJ (as he then was) in delivering the judgment of the Federal Court said, at page 160:

> We cannot see how the respondent should be deprived of his right by a purely technical error on the part of his solicitors ..... In any case prayer (e) in paragraph (7), "Any other relief which this Honourable Court deem fit to grant" must not be treated as a mere ornament to pleadings devoid of any meaning. We think that this prayer and the prayer for 'loss of earning' in paragraph 5(a) should entitle the Court to make such an assessment...

Applying *Lim Eng Kay (supra)* to the present appeal, the appellant could have argued and relied on *quantum meruit* if he wanted to. But, the appellant's Counsel refused to submit on these lines and he relied entirely on his claim for the specific amounts set out in the statement of claim - a course of action which he was entitled to take in law.

The appellant sought to rely on *Datin Peggy Taylor v. Udachin Development Sdn. Bhd.* [1984] 1 MLJ 85 (where the High Court held that the Pertubohan Arkitek Malaysia (PAM) guidelines should be imported because they reflect the custom or practice of the architectural profession, and on appeal to the Federal Court (*Udachin v Datin Peggy Taylor* [1985] 1 MLJ 121 FC), it was conceded that (PAM) guidelines should be used as the basis for calculation of the full fee) and argued that the By-Laws for the accountants should be imported in calculating the professional fees incurred by the appellant. It was further argued that the evidence of Soh Siong should also be accepted as a guideline for the Court to arrive at its decision.

The respondent took exception and argued that the *Datin Peggy Taylor's* case (*supra*) was grounded on *quantum meruit* claim and it concerned an architect claiming his fees for a project which was abandoned. Under the "Conditions of Engagement and Scale of Professional Charges" drawn up by (PAM) it was provided clearly that in the case of a project being abandoned the architect was entitled to two-thirds of his total fees (see the decision of the Federal Court). Flowing from this, the respondent argued further that the By-Laws for accountants do no contain guidelines like that found in (PAM) or like those guidelines meant for the legal profession and, consequently, it was submitted that the By-Laws for accountants should not be applied for the benefit of the appellant.

It is germane, at this juncture, to examine the By-Laws for accountants. Paragraph 2 of the By-Laws under the sub-heading "Fundamental Principles" *inter alia* states that:

> ... as a professional man, a member must at all times perform his work objectively and impartially and free from influence by any consideration which might appear to be in conflict with this requirement.

Paragraph 11-1 of the By-Laws under the sub-heading "Fees" states:

> Professional fees charged by members should be a fair reflection of the value of the work performed for the client, taking into account:
>
> (a) the skill and knowledge required for the type of work involved;
>
> (b) the level of training and experience of the persons necessarily engaged on the work;
>
> (c) the time necessarily occupied by each person engaged on the work;
>
> and
>
> (d) the degree of responsibility and urgency that the work entails.

Paragraph 18-1 under the sub-heading "Acts Discreditable To The Profession" states:

> Acts discreditable to the profession" or "unprofessional conduct" includes gross carelessness, neglect and incapacity in the performance of professional duties and impropriety in professional conduct. A member shall not commit any acts discreditable to the profession which shall include but is not confined to the following acts:
>
> (a) Retention of client records after a demand is made for them is an act discreditable to the profession. Provided always that a member may exercise his right of lien over such records in respect of unpaid fees legitimately due to him.

(b) A member who wilfully makes or permits or directs another to make, false and misleading entries in the financial statements or records of an entity shall be considered to have committed an act discreditable to the profession.

(c) A member who knowingly in any manner advises any of his clients in any scheme whereby his client may evade tax is committing an act discreditable to the profession.

(d) A member who wilfully and with the intention to defraud:

(i) issues any cheque or

(ii) becomes a party to the issuance of any cheque

which is dishonoured upon presentation due to lack of funds or any other reason is committing an act discreditable to the profession.

In my judgment, the By-Laws for accountants made comprehensively should be adopted as they reflect the professional conduct and ethics of accountants in the country to the appellant and in so doing, I have not lost sight of the evidence of Soh Siong which greatly assisted me in coming to the decision in regard to the claim under the first bill. The respondent admitted that there was an oral agreement with the appellant and the respondent took exception with the first bill because it was not only exorbitant but the price was tailored like an international accounting firm. The said Dato' must have expected a low priced bill from the appellant as they were schoolmates and knew each other since 1979 and they both joined the Foon Yew Old Boys Association. In my judgment, the first bill was perfectly in order as it reflected what Soh Siong said to be a normal practice for accountants in Malaysia to calculate their professional fees in a time cost schedule. Having devoted 316 1/2 man hours on the job, the appellant was entitled to be paid for it and, I, so ordered accordingly. The decision of the trial Court on this point was set aside.

In regard to the second bill, the statement of claim described it as professional services in the sum of RM1,200 rendered by the plaintiff (appellant) to the defendant (respondent) for completion and submission of tax returns and computation for the year of assessment 1988. The trial Court dealt with this point summarily in this fashion. She referred to bill TX/1771/85 dated 26 March 1985 (exhibit D3) which was for a similar service in 1984 which cropped up during the cross-examination of the appellant where the amount stated therein was said to be RM100. She then proceeded to take into account the explanation of the appellant in regard to the increase as reflected in the second bill particularly the fact that in 1984 the hospital was still not fully functional as compared to 1987. She then adverted to the admission of the appellant that there was no written agreement and consent from the respondent for the increase of the fees and was of the opinion that the appellant could not arbitrarily increase the fees in view of the provisions of s. 172(16) of the Companies Act, 1965 and then proceeded to award the appellant the sum of RM100 equivalent to the amount charged by the appellant for a similar service in 1984. Obviously there are flaws in the reasoning of the trial Court, The second bill was for professional services rendered by the appellant for tax matters and it was done at a time when the respondent was fully operational which could not be compared with the dormant period in 1984. Section 172(16) of the Companies Act, 1965 relates to the fees and expenses of an auditor of a company and it enacts in the following terms:

(16) The fees and expenses of an auditor of a company:

(a) in the case of an auditor appointed by the company at a general meeting - shall be fixed by the company in general meeting or, if so authorized by the members at the last preceding annual general meeting, by the directors; and

(b) in the case of an auditor appointed by the directors or by the Registrar - may be fixed by the directors or by the Registrar, as the case may be and, if not so fixed, shall be fixed as provided in paragraph (a) as if the auditor had been appointed by the company.

There was no evidence adduced before the trial Court to show whether the fees and expenses of an auditor of the respondent's company would include fees for completion and submission of tax returns as set out in the second bill. But in comparing the second bill with the third bill, one thing is certain and that is this. The third bill relates purely to professional services rendered to audit the respondent company's accounts and for accountancy services therein quite distinct from the second bill.

The respondent would be on firmer ground because on the same day as the second bill was issued, this was on 28 March 1988, the appellant issued a bill *vide* TX/1588/88 (exhibit D4) where for the same service rendered to the respondent the figure of RM75 was shown, in short, there were two bills issued by the appellant on the same day in regard to the same subject matter but with different price tags. No explanations were made to explain these discrepancies. Consequently, the claim of the appellant in regard to the second bill should have been dismissed by the trial Court and, to this extent, the judgment of the trial Court where she allowed the appellant a sum of RM100 for the second bill should be set aside.

In regard to the third bill, the reasoning of the trial Court that there was no consent or approval from the respondent's company in unilaterally increasing the audit fees (s. 172(16) of the Companies Act, 1965) and, consequently, limiting the appellant's claim to RM3,000 at par with similar services rendered in 1985 should stand.

To recapitulate, the outcome of the appeal would be as follows:

(1) the appellant's appeal in regard to the first bill was allowed and this meant that the order of the trial Court dismissing this claim was set aside;

(2) the appellant's appeal in regard to the second bill was dismissed and this meant that the order of the trial Court that the appellant was entitled to be paid a sum of RM100 was set aside forthwith; and

(3) the appeal in regard to the third bill was dismissed but the order of the trial Court that the appellant was entitled to RM3,000 under it remained.

The costs of this appeal should rightly go to the appellant. As for the interest, I ordered that the appellant be given the interest in accordance with paragraph 5(ii) of the statement of claim.